(2)

FILED
DEC 26 2006
OFFICE OF THE CLERK
SUPREME COURT, U.S.

No. 06-495

In The
Supreme Court of the United States
OCTOBER TERM 2006

RONALD W. ERICKSON,
d/b/a RXR RAILROAD & DEPOT CO.
Petitioner,

v.

WASHINGTON STATE
DEPARTMENT OF NATURAL RESOURCES
Respondent.

On Petition for Writ of Certiorari to the Washington State Court of Appeals Division II
Applied For: June 6, 2006
Denied: Nov. 27, 2006

PETITION FOR REHEARING
(corrected)

RONALD W. ERICKSON, *pro se*
934 W. Lauridsen Blvd. #209
Port Angeles, WA 98363
(360) 457-5527

QUESTIONS

Is the application of abandonment's "cessation of purpose/ use" doctrine on railroad property sold by a bankruptcy court a violation of the federal Supremacy Clause; Due Process; the Commerce Clause; the legislated intentions in congressional bankruptcy and transportation laws; or common law's 1881 "shifting public use" doctrine?

Underlying questions contained therein are:

1. Is abandonment law only applied to railroads that are only easements and nothing more? And

2. Does abandonment's "automatic reversion" apply to undeveloped rail rights vested with other possible public uses? And

3. Does the payment of property or excise taxes prove intent to not abandon rail property? And.

4. In Washington is a sale of railroad rights of way to a timber company an acceptable practice to not bring abandonment? And

5. Is the application of abandonment law on undeveloped rail property a violation of common law's shifting public use doctrine? And

6. Is applying WASH. REV. CODE § 81.36.070 (1961) to railroad sales vested prior to 1961 unconstitutional?

PARTIES TO PROCEEDING

There are no other Petitioners in this proceeding. RXR Railroad & Depot Company is individually owned by Ronald W. Erickson.

There are no additional Respondents other than the Washington State Department of Natural Resources.

TABLE OF CONTENTS

Page

QUESTIONS.....i

PARTIES TO PROCEEDING.....ii

TABLE OF AUTHORITIES.....v

JURISDICTION.....1

ADDITIONAL CONSTITUTION AND STATUTES.....1

STATEMENT OF FACTS NOT CITED IN CERT.....1

ARGUMENT.....2

INTRODUCTION.....2

A. ABANDONMENT APPLICATION ON PROPERTY WHERE TAXES ARE PAID IS A VIOLATION OF ABANDONMENT THEOR.....3

B. ABANDONMENT APPLIED TO PETITIONER'S UN-DEVELOPED RAIL RIGHTS IS UNCONSTITUTIONAL.....3

1. Circumventing Writs of Mandamus is Unconstitutional.....3

2. Railroad Abandonment Presumes a Use.....4

C. RAILROADS TRADITIONALLY ALLOWED PUBLIC ROAD AND "SPUD" USES.....6

D. THE SALE OF RAIL PROPERTY TO TIMBER CORPORATIONS IS LAWFUL.....8

CONCLUSION.....10

CERTIFICATE OF COUNSEL.....10

APPENDIX.....App. 1

Appendix. A

United States Code.....App. 1

Appendix. B

Laws of Washington.....App. 2

Appendix. C

1903-1910 TRANSIT & LOGGING USE of Public Railroad Rights of Way Through State Lands.....App. 5

Appendix. D

1992 DNR Letter to Jefferson County.....App. 6

Appendix. E

1999 Jefferson Prosecutor's Letter .....App. 8

Appendix. F

2000 CMC Railroad Assignment.....App. 10

Appendix. G

2001 State Attorney General Letter..... App. 14

Appendix. H

1912 Jefferson County Tax Roll.....App. 15

Appendix. I

1994 Jefferson County Tax Roll.....App. 16

Appendix. J

2005 Petition For Review.....App. 21

TABLE OF AUTHORITIES

CASES:

Abercrombie v. Simmons, 81 P. 208 (1905).....6, 8

Barney v. Burlington N. R.R. Co., 490 N.W.2d 726 (S.D. 1992) cert. denied 507 U.S. 914 (1993).....6, 7

Brewer and Taylor Co. v. Wall, 769 S.W.2d 753 (1989).....5

Burnier v. Dep't of Envtl. Res., 611 A.2d 1366 (1992).....8

Cannco Construction Co. v. Livington, 669 S.W.2d 457 (1984).....5

Charles River Bridge v. Warren Bridge, 36 U.S. (1 Pet.) 420 (1837).....4

Chew v. Commonwealth, 161 A.2d 621 (1960).....7

Columbia Valley R.R. Co. v. Portland & S. Ry. Co., 94 P. 918 (1908).....3, 9

Crescent Township v. Pittsburg & L. E. R.R. Co., 59 A. 1103 (1904).....7

Detroit v. Detroit Citizens St. Ry. Co., 184 U.S. 368 (1902) 4

Eldridge v. City of Greenwood,
388 S.E.2d 247 (1989).....7, 8

Flora v. United States, 362 U.S. 145 (1960).....2

Gelpeke v. Dubuque, 68 U.S. 221 (1863).....9, 10

Havemeyer v. Iowa City, 70 U.S. 294 (1865).....9

Herndon v. Georgia, 295 U.S. 441 (1935).....2, 8

ICC v. Oregon-Washington R.R. & Nav. Co.,
228 U.S. 14 (1932).....4

Illinois Central R.R. Co v. Ill. Commerce Comm'n,
75 N.E.2d 23 (1947).....5

Joy v. City of St. Louis, 138 U.S. 1 (1890).....7

Lacy v. East Broad Top R.R. & Coal Co.,
77 A.2d 706 (1951).....5, 6

Lake Superior & Mississippi R.R. Co. v. U.S.,
93 U.S. (3 Otto) 442 (1877).....7, 8

Lawson v. State, 107 Wn.2d 444 (1986).....7

Lynch v. U.S. 292 U.S. 571 (1934).....9

Maier v. The Dalles & S. R.R. Co.
90 P.2d 782 (1939).....3

Martell v. Stewart, 628 P.2d 1069 (1981).....3

Marthens v. B & O R.R. Co.,
289 S.E.2d 706 (1982).....5

McAdam v. Benson Logging Etc. Co.,
107 P. 187 (1910).....5, 6

Middlesboro Town & Land Co. v. Louisville & N. R.R. Co., 120 S.W.2d 394 (1938).....6

National Wildlife Federation v. ICC,
850 F.2d 694 (D.C. Cir. 1988).....5, 6

Neitzel v. Spokane Int'l R.R. Co., 141 P. 186 (1914).....5

Netherlands Am. Mortg. Bank v. E. R.R. & L. Co.,
252 P. 916 (1927).....4

Nicomen Boom Co. v. N. Shore Boom & Driving Co.,
82 P. 412 (1905)..... 5, 6

Northern Pacific R.R. Co. v. Territory of Wash.,
142 U.S. 492 (1892).....4

Ocean Shores R.R. Co. v. Spring Valley Water Co.,
262 P. 53 (1927).....5

Ohio Life Ins. & Trust Co. v. Debolt,
57 U.S. (16 How.) 416 (1853).....2, 9, 10

Olcott v. Supervisors of Fond Du Lac County,
83 U.S. (16 Wall.) 678 (1872).....7, 9

Paige v. Schenectady Ry. Co.,
70 N.E. 213 (1904).....9

Penn Cent. Corp. v. U.S. R.R.. Vest Corp.,
955 F.2d 1158, (7th Cir. Ind. 1992).....6

People v. Southern Pacific Co.,
158 P. 177 (1916).....3

Puett v. Western Pacific R.R., 752 P.2d 213 (1988).....6

Puget Sound Electric Ry. v. R.R. Comm'n,
117 P. 739 (1911).....7

Reid v. Covert, 351 U.S. 487 (1956).....2

Roeder Co. v. Burlington N. R.R. Inc.,
716 P.2d 855 (1986).....6, 7

Sandy River Coal Co. v. Champion Bridge Co.
48 S.W.2d 1062 (1932).....5

Saunders v. Shaw, 244 U.S. 317 (1917).....10

Schnabel v. County of DuPage,
428 N.E.2d 671 (1981)..... 5, 6

Scott v. Wallitner, 299 P.2d 204 (1956).....6, 7

Silver King Co. v. Conkling Co., 256 U.S. 18 (1921).....2

Smyth v. Ames, 169 U.S. 466 (1898).....7

Spokane v. Merrian, 141 P. 358 (1914).....5

Spokane v. Washington & Great N. Ry. Co.,
219 U.S. 166 (1911).....7

State v. Dept. of Natural Resources, 329 N.W.2d 543
(1979) cert. denied 463 U.S. 1209 (1983).....7

W. W. Cargill Co. v. Minn. ex rel. R.R. & Warehouse
Comm'n, 180 U.S. 452 (1900) 3, 7

Williams v. Atlantic Coast Line R.R. Co,
17 F.2d 17, 19 (4th Cir. 1927).....7

UNITED STATES CODE

43 USC § 912 (1922).....7

SUP. CT. R. 44.2.....1, 10

LAWS OF WASHINGTON

WASH. REV. CODE § 81.36.070 (1961).....1, 9

WASH. REV. CODE § 34.05.010 (1997) (3).....1, App. 2

1909 WASH. LAW 173.....8

1909 WASH. LAW 196 § 2.....1, 9

1961 WASH. LAW 12 @ 81.36.070.....9

OTHER AUTHORITIES

3 *Kent, Comm.* 448 [James Kent, COMMENTARIES ON AMERICAN LAW (Vol. 3 § 448) (7th ed., New York, William Kent Publishers 1851).....5

Commencement and duration of express easement as affected by provisions instrument creating it, 154 A.L.R. 7 (1945).....5

Edward L. Pierce, A TREATISE ON THE LAW OF RAILROADS 233 (Little, Brown & Co. 1881) (1881).....8

Railroads, 2004 DIGEST OF UNITED STATES SUPREME COURT REPORTS LAWER'S EDITION, Vol. 11-A §2.....7

Who entitled to land upon its abandonment for railroad purposes, where railroad's original interest or title was less than fee simple absolute, 136 A.L.R. 296 (1942).....4

JURISDICTION

A. FEDERAL JURISDICTION

This Court has jurisdiction under SUP. CT. R. 44.2, when "other substantial grounds" are presented.

B. ISSUES RAISED IN STATE COURTS [1]

Respondent raised the significance of tax payments (CP 117, OB 22, UO 5, WC App D). Attached is the Petition for Review to the State Supreme Court (App. J).

ADDITIONAL CONSTITUTION AND STATUTES

43 U.S.C. § 912, WASH. REV. CODE § 34.05.010, WASH. REV. CODE § 81.36.070, 1909 WASH. LAWS 196 § 2.

STATEMENT OF FACTS NOT CITED IN CERT.

In 1989 CMC began to not pay taxes (CP 31 @ 3.13).

On Nov. 10, 1992 the Jefferson County Treasurer announced a tax auction to sell Rail Property (CP 118-20).

On Nov. 17, 1992 Dean Wilson wrote Jefferson County stating that CMC "by ceasing to pay property taxes on the easements, the DNR is terminating the following easements" (App. D, H affirming Wilson's affidavit CP 117).

On Nov. 23, 1992 DNR wrote Jefferson County Treasurer requesting "that the county withdraw[s] these parcels from your tax foreclosure sale" (CP 120).

---

[1]Abbreviations: **Chicago** – Chicago, Milwaukee, St. Paul & Pacific R.R. Co., et al; **CMC** - CMC Real Estate Corp. as assigned trustee of the BANKR. CT.; **CP** - Clerk Papers; **DNR** - WA State Dep't of Natural Res.; **OB** - Corrected Opening Brief to State Court of Appeals; **OE** - Olympic Eagle, Inc. & Warren L. Stetson Trust; **RB** - Petitioner's Reply Brief to State Court of Appeals; **Rail Property** - Petitioner's railroad rights of way; **SPUD** - Shifting Public Use Doctrine; **WC** – Cert. Erickson v. DNR; misc.: (*) - L.Ed. pg. #; (~) - estimated pg. #.

On Sept. 2, 1993 OE acquired Rail Property from CMC "subject to general real estate taxes which are a lien but not yet delinquent" (CP 113, *see* App. I).

On Aug. 11, 1998 Petitioner acquired from OE the Rail Property "subject to general real estate taxes" (CP 90).

On Sept 28, 1999 Jefferson County Prosecuting Attorney wrote Petitioner saying, "county returned the money you paid in taxes on this land. . . ." (CP 131, App. E).

The Rail Property was not developed (CP 31 & 117).

ARGUMENT

In the past This Court has reheard cases when: 1) substantial doubt is evident;[2] 2) to examine single clauses in opinions[3] as are the involuntary actions cited to prove abandonment (UO 5, 6); 3) to review questions "left open."[4] and 4) to protect contracts.[5] Petitioner argued a constructive interpretation of the legislated granting instrument's use of the word "road" to include other vested public uses of the Rail Property. The court overlooking an interpretation thereof came as a surprise and the public deserves it to be heard.[6] The lower court's finding of abandonment is not lawfully supported by the evidence cited.

A. ABANDONMENT APPLICATION ON PROPERTY WHERE TAXES ARE PAID IS A VIOLATION OF

---

[2] *Reid v. Covert*, 351 U.S. 487, 487 & 491 (1956).

[3] *Flora v. United States*, 362 U.S. 145, 167 (1960) ("focused almost exclusively upon a single clause in the prior opinion").

[4] *Silver King Co. v. Conkling Co.*, 256 U.S. 18, 25 (1921).

[5] *Ohio Life Ins. & Trust Co. v. Debolt*, 57 U.S. (16 How.) 416, 429 (1853) (quote at fn # 47).

[6] *Herndon v. Georgia*, 295 U.S. 441, 455 (1935) (argument shut out).

ABANDONMENT THEORY.

CMC began to not pay taxes in 1989 (CP 31). The Rail Property was withdrawn from the tax foreclosure sale in 1992 (CP 120). Tax obligations on Rail Property were not delinquent -when sold by CMC in 1993 (CP 113). Consequently the Rail Property was NOT sold to avoid foreclosure as the lower court opinion claimed (UO 5). Petitioner's tax payments were refunded (CP 131, App. E).

Case law argues strongly that tax payments on rail property defer abandonment (OB 21, 22, 35, RB 12).[7] If the lower court had examined more closely the facts they may not have listed a "sale to avoid foreclosure" as evidence.

B. ABANDONMENT APPLIED TO PETITIONER'S UN-DEVELOPED RAIL RIGHTS IS UNCONSTITUTIONAL

1. Circumventing Writs of Mandamus is Unconstitutional.

Railroad rights of way are contracts.[8] Petitioner's Rail Property was vested at time of original acquisition.[9]

The lower court cited that, "Chicago failed to acquire rights over other intervening private lands. . . . necessary to link up the easements into a rail corridor" as evidence of abandonment (UO 5). W*rits of mandamus are* proper to enforce contracts (OB 5, 15, RB 6, 14) but are restricted to

---

[7]*Martell v. Stewart,* 628 P.2d 1069, 1071 (1981) citing *People v. S. Pac. Co.*, 158 P. 177, 180 (1916); *Maier v. The Dalles & S. R.R. Co.* 90 P.2d 782, 787 (1939) (foreclosure settlement not abandonment).

[8]*W. W. Cargill Co. v. Minn. ex rel. R.R. & Warehouse Commission,* 180 U.S. 452, 469 (1900) ("is a public highway . . . acquired by the railroad company under an inviolable contract with the state. . . .").

[9]*Columbia Valley R.R. Co. v. Portland & S. Ry. Co.*, 94 P. 918, 919 (1908) ("determining its rights under its contract of purchase. . . .").

the terms of the grant and must be both "remunerative" and "clearly" required.[10] Forcing service "to require extension of existing lines beyond the scope of a carrier's commitment to the public service is a taking of property in violation of the federal constitution."[11] Petitioner's Rail Property had no construction or reversion clauses (1901 WASH. LAWS 173, OB all, WC App. 34). Washington courts had previously found that an "implied obligation to construct within a reasonable time" was heard and found inadequate.[12] Lower courts' citing failures to acquire property not enforced by a *writ of mandamus* as evidence of abandonment must stop.

This Court has found perpetual, unlimited easements to be grants "in fee"[13] (OB 14).). This Court has said of grants, "intention of the testator prevails over the legal interpretation of the words" (OB 18) and that a state's vested intent must prevail on undeveloped rail properties.[14]

2. Railroad Abandonment Presumes a Use (RB 8).[15]

Rail abandonment is after rail use and after an ICC, STB[16] or state agency[17] has granted abandonment of service.

---

[10] *N. Pac. R.R. Co. v. Terr. of Wash.*, 142 U.S. 492, 1095 & 98 (1892).
[11] *ICC v. Oregon-Wash. R.R. & Nav. Co.*, 228 U.S. 14, 41 (1932).
[12] *Neth. Am. Mortg. Bank v. E. R.R. & L. Co.*, 252 P. 916, ~ 918 (1927).
[13] *Detroit v. Detroit Citizens St. Ry. Co.*, 184 U.S. 368, 394 (1902) ("is not, by its terms, limited and revocable, the grant is in fee. . . .").
[14] *Charles River Bridge v. Warren Bridge*, 36 U.S. (1 Pet.) 420, 547 (1837) ("abandonment ought not to be presumed . . . purpose of the state to abandon it does not appear."); *Charles* 36 U.S. at 583i.
[15] *Who entitled to land upon its abandonment for railroad purposes . . . less than fee simple absolute* 136 A.L.R. 296 (1942) (" 'abandonment,' has . . . been . . . once actually in use for railroad purposes").
[16] *Nat'l Wildlife Feed's v. I.C.C.*, 850 F.2d 694, 703 (D.C. Cir. 1988).
[17] *Schnabel v. County of DuPage*, 428 N.E.2d 671, 673 (2d Dist. 1981)

The doctrine of "cessation of use" also presumes a use.[18]

The lower court listed the building of Highway 101 as evidence of abandonment (UO 6). Abandonment must be only by easement holder's actions and not "involuntary."[19]

The doctrine of railroad nonuse presumes a prior use. Respondent's cases cited had prior rail use.[20] Nonuse does yield to any future uses (OB 7).[21] OE's selling title insured future rail use thereof.[22] Rail interests are honored first when "doubts" of abandonment are present (RB 9).[23] The doctrine of nonuse[24] was intended to be applied only to rail grants: 1) "acquired by eminent domain,"[25] or 2) that had performance

---

Lacy v. E. Broad Top R.R. & Coal Co., 77 A.2d 706, 708 (1951).

[18]*Nicomen Boom Co. v. N. Shore Boom & Driving Co.*, 82 P. 412, 416 (1905) ("shall 'cease' . . . does not apply . . . not yet used").

[19]3 *Kent, Comm.* 448, p 551 (1851); *Neth. Am. Mortg. Bank v. E. R.R. & L. Co.*, 252 P. 916, ~ 919 (1927) ("non-user, intention to abandon and damage to the owner . . . must concur. . . ."); *Ocean Shores R.R. Co. v. Spring Valley Water Co.*, 262 P. 53, 55 (1927) ("The intention to abandon is . . . acts of the owner only . . . ."); *Ill. Cent. R.R. Co v. Ill. Commerce Comm'n*, 75 N.E.2d 23, 26 (1947) ("involuntary act").

[20]*Schnabel* 428 N.E.2d at 673; *Brewer and Taylor Co. v. Wall*, 769 S.W.2d 753, 754 (1989); *Cannco Const. Co. v. Livington* 669 S.W.2d 457, 459 (1984).

[21]*Sandy River Coal Co. v. Champion Bridge Co.* 48 S.W.2d 1062, 1064 (1932) ("intends to use in the future. . . ."); *Neitzel v. Spokane Int'l R.R. Co.*, 141 P. 186, 190 (1914) ("may anticipate future needs"); *Nicomen*, 82 P. at 415 ("anticipate future necessities. . . ."; *McAdam v Benson Logging & Lumber. Co.* 107 P. 187, 188 (1910) ("Nor will mere nonuser defeat the right . . . when no time has been stipulated for the use. . . ."); *Spokane v. Merrian*, 141 P. 358, 363 (1914) ("reason-able necessity, not an absolute necessity. . . ."; *Commencement and duration* . . . . 154 A.L.R. 7 (1945) ("no rule of law 'prohibiting . . . to take effect . . . in the future.' ".

[22]*Ocean Shores* 262 P. at 55 ("The intention to abandon is . . . to be inferred from . . . its dealings with relation to its title.").

[23]*Marthens v. B & O R.R. Co.*, 289 S.E.2d 706, 713 (1982).

[24]*Nat'l Wildlife Fed'n v. I.C.C.*, 850 F.2d 694, 703 (D.C. Dir. 1988).

[25]*Lacy v. E. Broad Top R.R. & Coal Co.*, 77 A.2d 7 06, 708 (1951);

requirements,[26] not 3) legislated grants similar to Congressional grants that are exempt from abandonment.[27] Nonuse requires other causes to impair development and "destroy the use.[28] Abandonment in part only abandons part.[29]

C. RAILROADS TRADITIONALLY ALLOWED PUBLIC ROAD AND "SPUD" USES.

The law is clear that abandonment doctrines ONLY apply to railroad rights of way that are considered ONLY an easement and nothing more (OB 13).[30] The lower court said the legislature granted only an easement and nothing more (UO 7) and that "it was not intended to be a public highway" (UO 7). This Court has asserted railroads to be a "public highway."[31] This Court has also found that "[c]onsiderations

---

Nicomen, 82 P. at 416 (Code applies to lands "acquired by eminent domain.").

[26] *McAdam v. Benson Logging Etc. Co.*, 107 P. 187, 187 (1910) ("Nor will mere nonuser defeat the right to occupy a right of way for purposes expressed in a grant, when no time has been stipulated").

[27] *Barney v. Burlington N. R.R. Co.*, 490 N.W.2d 726, 730 (S.D. 1992) cert. denied; *Puett v. W. Pac. R.R.*, 752 P.2d 213, 217 (1988).

[28] *Nicomen* 82 P. at 416 (1905); *Schnabel v. County of DuPage*, 428 N.E.2d 671, 676 (2d Dist. 1981) ("non-use is accompanied by acts . . . intention to abandon and . . . destroy . . . easement. . . .").

[29] *Abrocrombie v. Simmons*, 81 P. 208, 209 & 210 (1905) ("an abandonment of a portion of the right of way operates to vest that portion in the owner of the adjoining land.").

[30] *Penn Cent. Corp. v. U.S. R.R.. Vest Corp.*, 955 F.2d 1158, 1159 (7th Cir. Ind. 1992) citing: *Nat'l Wildlife Fed'n v. ICC*, 850 F.2d 694, 702 (D.D. Cir. 1988); *Middlesboro Town & Land Co. v. Louisville & N. R.R. Co.*, 120 S.W.2d 394, 396 (1938); *Roeder Co. v. Burlington N. R.R. Inc.*, 716 P.2d 855, 859 (1986) ("nothing more"); *Scott v. Wallitner*, 299 P.2d 204, 206 (1956).

[31] Railroads, 2004 DIGEST OF UNITED STATES SUPREME COURT REPORTS LAWER'S EDITION, Vol. 11-A §2 at 425 citing: *Olcott v. Supervisors*, 83 U.S. 678, *384 (1873); *Lake Superior & Miss. R.R. Co. v. U.S.*, 93 U.S. (3 Otto) 442 *967 (1877); *Smyth v. Ames*, 169 U.S. 466, 544(1898); *W. W. Cargill Co. v. Minn. ex rel. R.R. & Warehouse*

of the interests of the public are held to be controlling . . . as a railroad comes . . . under the domination of the court.[32]

In 1922 the Congressional "committee was called to the fact that in some cases highways have been established on abandoned rights-of-way (OB 30, 33)."[33] Road use is sometimes permitted on railroads.[34] Some states abrogated railroads as public roads.[35] Washington did not but declared such highways.[36] The lower court disagreed saying that the Rail Property "was not intended to be a public highway. . . ." (UO 9). The word "road" described the Rail Property.[37]

E. L. Pierce wrote describing the SPUD,

> When property has been taken for a public use, and full compensation made for the fee or a perpetual easement, its subsequent appropriation to

---

Comm'n, 180 U.S. 452, 469 (1900); *Lawson v. State*, 107 Wn.2d 444, 467 (1986) ("railroads as public highways . . . justifies protecting . . . for public transportation use.") citing *State v. Dept. of Natural Res.* 329 N.W.2d 543 (1979) *cert. denied* 463 U.S. 1209 (1983).

[32] *Joy v. City of St. Louis*, 138 U.S. 1, *858 (1890), *Spokane v. WA & Great N. Ry. Co.*, 219 U.S. 166, 173 (1911) ("forfeiture must be asserted be judicial proceedings authorized by law.").

[33] *Barney v. Burlington N. R.R. Co.*, 490 N.W.2d 726, 730 (S.D. 1992) cert. denied ("easement granted by Congress . . . is not a common law easement."); 43 USC § 912 (1922).

[34] *Williams v. Atl. Coast Line R.R. Co*, 17 F.2d 17, 19 (4th Cir. 1927) (paving public road on railroad not abandonment); *State* 329 N.W.2d at 547 ("settled law that the easement is not limited to the particular methods of use in vogue when the easement was acquired. . . ."); *Chew v. Commonwealth*, 161 A.2d 621, 624 (1960) (R.R. converted to bus service); *Crescent Twp. v. Pittsburg & L. E. R.R. Co.*, 59 A. 1103, 1104 (1904) ("travelers and vehicles used it thereafter as a road," and "not sufficient evidence to show abandonment. . . .").

[35] *Lake Superior* 93 U.S. At *966 and *969 ("railroads were originally declared public highways, the right of the public to use them has been expressly abrogated; as in Massachusetts. . . .").

[36] *Puget Sound Elec. Ry. v. R.R. Comm'n*, 117 P. 739, (1911).

[37] 1909 WASH. LAW 173.

> another public use – certainly if one of a like kind – does not require further compensation to the owner (case footnote). Nor is such compensation required where there is a change in the person or body enjoying and controlling the property taken, or in the conditions upon which the public may use it.[38]

Such was the vested public use of the Rail Property to allow public uses and private ownerships thereof. The lack of a lower courts' interpretation of the word "road" came as a surprise to Petitioner and deserves to be heard[39] (OB 27- 44).

D. THE SALE OF RAIL PROPERTY TO TIMBER CORPORATIONS IS LAWFUL.

Rail conveyances to "non railroad" owners are not always abandonment.[40] The Kansas Supreme Court asked,

> Was the interest which the railroad company acquired by the deed one which it could convey to plaintiff? The general rule is that, in the absence of charter or statutory restrictions, corporations may take, hold, and convey land for any purpose not inconsistent with those of which they were created.[41] (App. 35)

Evidence citing a corporation's affidavit to "absolve itself of a public duty" claiming no intent to use property for rail purposes (UO 6) is unethical (OB 11).[42] Actions speak.

---

[38]Edward L. Pierce, A TREATISE ON THE LAW OF RAILROADS 233 (Little, Brown & Co. 1881) (1881).

[39]*Herndon v. Georgia,* 295 U.S. 441, 455 (1935).

[40]*Burnier v. Dep't of Envtl. Res.*, 611 A.2d 1366, 1368 (1992).

[41]*Abercrombie v. Simmons*, 81 P. 208, 210 (1905).

[42]*Paige v. Schenectady Ry. Co.*, 70 N.E. 213, 217 (1904) ("attempts to absolve itself from its obligations without the consent of the state, is void . . . is void as against public policy (cases omitted).").

The lower court also discounted the pre-1961 vested rights under WASH. REV. CODE § 81.36.070 (1961) that authorized railroads to be sold to non-railroad entities [43] (OB 22, RB 7, UO 6, App. B). The lower court said such "was inapplicable" (UO 6). Modified statutes may not be given retroactive effect if such may interfere with vested rights.[44]

Washington courts established the Rail Property as vested in 1909 as land purchased [45] and

> This court has repeatedly decided that if a contract when made was valid under the Constitution and laws of a State, as they had been previously expounded by its judicial tribunals, and as they were understood at the time, no subsequent action by the Legislature or the judiciary will be regarded by this court as establishing its invalidity. [46]

Historically timber corporations did use railroads to log (OB 21). DNR sold identical rail rights to such (App. C). Washington laws also historically made no distinction between public and private rail use on city streets. Petitioner owns an assignment from CMC for any "demands whatsoever" that includes pre-abandonment damages (App.

---

[43] WASH. REV. CODE § 81.36.070 (1961); 1909 WASH. LAW 196 § 2; 1961 WASH LAW 12 @ 81.36.070.

[44] *Havemeyer v. Iowa City*, 70 U.S. 294, *39 (1865) (" new decisions of our Supreme Court are . . . to be rejected because they destroy vested rights"), citing *Lynch v. U.S.* 292 U.S. 571, 39* (1934).

[45] *Columbia Valley R.R. Co. v. Portland & S. Ry. Co.*, 94 P. 918, 919 (1908) ("it described the land purchased by metes and bounds. . . .").

[46] *Olcott v. Supervisors of Fond Du Lac County*, 83 U.S. (16 Wall.) 678, *383 & *386 (1872) citing *Havemeyer* 70 U.S. at *39; *Ohio Life Ins. & Trust Co. v. Debolt*, 57 U.S. (16 How.) 416, 431 (1853); *See Gelpeke v. Dubuque*, 68 U.S. 221, 222 (1863) (contract validity).

F). The time of abandonment must be determined without the inappropriate evidences cited by the lower court. Petitioner acquired his State rail contracts under a general statute and appeals to this Court to perform its duty and protect his contract.[47] "What more "can Petitioner do."[48]

CONCLUSION

For the reasons set forth above, as well as those in Petitioner's writ of certiorari, Petitioner prays that this Court grant rehearing of the order of denial, vacate that order, grant the petition and review the judgment and opinion below.

Respectfully submitted,

Ronald W. Erickson *pro se*
934 W. Lauridsen Blvd. # 209
Port Angeles, WA 98363.
(360) 457-552

CERTIFICATE OF COUNSEL

I, Ronald W. Erickson, acting as counsel in my own behalf, do hereby certify that this petition for rehearing of a writ of certiorari is presented in good faith and not for delay and is restricted to the grounds specified in Rule 44.2.

[47] *Ohio* 57 U.S. at 429 ("When a contract is made, . . . it shall not be impaired, and makes it the duty of this court to carry it into execution that duty must be performed.").

[48] *Saunders v. Shaw*, 244 U.S. 317, 320 (1917).

APPENDIX A
UNITED STATES CODE

---

43 U.S.C. § 912 (1922) Disposition of abandoned or forfeited railroad grants

Whenever public lands of the United States have been or may be granted to any railroad company for use as a right of way for its railroad or as sites for railroad structures of any kind, and use and occupancy of said lands for such purposes has ceased or shall hereafter cease, whether by forfeiture or by abandonment by said railroad company declared or decreed by a court of competent jurisdiction or by Act of Congress, then and thereupon all right , title, interest, and estate of the United States in said lands shall, except such part thereof as may be embraced in a public highway legally established within one year after the date of said decree or forfeiture or abandonment be transferred to and vested in any person, firm or corporation, assigns, or successors in title and interest to whom . . . . Provided, That this section shall not affect . . . nor shall this section affect any public highway on said right of way on March 8, 1922. . . .

(Mar. 8, 1922, c. 94, 42 Stat. 414.)

APPENDIX B
LAWS OF WASHINGTON

WASH. REV. CODE § 34.05.010 (1997) Definitions

Definitions set forth in this section shall apply throughout this chapter, unless the context clearly requires otherwise.

(3) "Agency action" means licensing, the implementation or enforcement of a statute, the adoption or **application of an agency rule or order** (emphasis added), the imposition of sanctions, or the granting or withholding of benefits.

Agency action does not include . . . (c) any sale, lease, contract, or other proprietary decision in the management of public lands . . . .

[1997 c 136 § 2; 1992 c 44 § 10; 1989 c 175 § 1; 1988 c 288 § 101; 1982 c 10 § 5. Prior: 1981 c 324 § 1; 1981 c 183 § 1; 1967 c 237 § 1; 1959 c 234 § 1. Formerly RCW 34.04.010.]

WASH. REV. CODE § 81.36.070 (1961) Purchase, Lease, Sale, Merger Of Railroads

Any railroad company now or hereafter incorporated pursuant to the laws of this state or of the United States, or of any state or territory of the United States, may at any time

by means of subscription to the capital stock of any other railroad company or by the purchase of its stock or bonds, or by guaranteeing its bonds or otherwise, aid such company in the construction of its railroad within or without this state; and any such company owning or operating a railroad within or without this state, may extend the same into this or any other state or territory, and may build, buy, or lease the whole or any part of any other railroad, together with the franchises, powers and immunities and all other property and appurtenances appertaining thereto, whether located within or without this state; or may consolidate with any railroads or railroads in such other state or territory or with any other railroad in this state and may operate the same and may own such real estate and other property in such other state or territory as may be necessary or convenient in the operation of such road; and any such railroad company may sell or lease the whole or any part of its railroad and branches, within or without this state, constructed or to be constructed together with all property, rights, privileges, and franchises appertaining thereto, to, **-f-r-o-m-** -o-r- -w-i-t-h- **(cross out and emphasis added)** any railroad company organized or existing pursuant to the laws of the United States or of this state, or of any other state or territory of the United States; . . .

(Laws 1961, ch. 14 § 1.36.070)

prior: Laws of 1909 c 196 sec 2 p 701)

1909 WASH. LAWS 196

[H.B.119] RELATING TO RAILROADS. An Act relating to railroad companies; authorizing them to construct railroads and branches, and to sell, purchase, leases and consolidate with certain other railroads, and validating such sales, purchases, leases and consolidations heretofore made, and declaring an emergency.

Section 2

Any sale or purchase of and any consolidation by sale, or otherwise, or any lease, or agreement to sell, consolidate with or lease, the whole or any part of any railroad, or the branch lines of any company whether organized or located within or without this state, with the franchises appertaining thereto, **to, from or with** (emphasis added) any railroad company organized under the laws of the United States or of this state or any other state or territory or any consolidation between such companies heretofore executed by the proper officers of the respective companies parties to such sale lease or consolidation or contract is hereby legalized and made in all respects valid and binding from the date of its execution: Provided, That the provisions of this section shall not apply when the railroads or transportation corporations involved are competing lines.

APPENDIX C
1903-1910 TRANSIT & LOGGING USE
of Public Railroad Rights of Way Through State Lands

BBT	Big Bend Transit		
		# 160	Aug. 25, 1908
E&CVT	Everett & Cheney Valley Traction		
		# 207	July 16, 1909
RLC	Robbins Logging Co.		
		# 51	Feb. 8, 1904
SR&TC	Seattle Railway & Timber Co.		
		#197	(relinquished 1909)
SR&TC	Silver Lake Railway & Timber Co.		
		# 230	Feb. 16, 1910
SVL&WC	Spokane Valley Land & Water Co.		
		# 120	March 13, 1907
WCC	Wilson Coal Co.		
		#80	Dec. 8, 1915
WTC	Weyerhaeuser Timber Co.		
		# 41	Nov. 4, 1903

APPENDIX D
'92 DNR LETTER TO JEFFERSON COUNTY

(Emblem Deleted for printing)

Washington State Department of
Natural Resources

Brian Boyle
Commissioner of Public Lands

November 17, 1992

Olympic Region Office
Route 1, Box 1375
Forks, WA 98331
(206) 374-6131

Kathy Graham
Jefferson County Treasurer's Office
P.O. Box 571
Port Townsend, WA 98368

Re: Your letter dated November 10, 1992, concerning foreclosure sales on R/R easements to CMC Heartland.

Dear Ms. Graham:

Since neither the grantee or it's successors have ever used the right of way for the granted purpose and have demonstrated a lack of interest in doing so in the future by ceasing to pay property taxes on the easements, the DNR is terminating the following easements granted on various dates in 1909 to the Chicago, Milwaukee & Puget Sound Railway Company:

N., R. 12 W.

Easement # 6835, located in the N1/2 NW1/4, SW1/4 NW1/4, N1/2 SW1/4, SE1/4 SW1/4, W1/2 SE1/4 SE1/4 SE1/4, Sec. 21, T. 27 N., R. 12 W..

Easement # 6836, located in the SW1/4 NW1/4, W1/2 SW1/4, Sec. 27, T. 27 N., R. 12 W.

Easement # 6646, located in the W1/2 NW1/4, SE1/4 NW1/4, Sec 2, T. 27 N., R. 13 W.

Easement # 6766, located in the NE1/4 NE1/4, Sec. 3, T. 27 N., R. 13 W.

Upon completion of the termination process, our Olympia office will contact your Auditor's Office. If you have any questions please call.

Sincerely,
/s/ D. Wilson
Dean Wilson
Lands Specialist
for: John Calhoun
Olympic Region Manager

cc: file No's 6834, 6835, 6836, 6646 & 6766

Equal Opportunity Affirmative Action Employer

APPENDIX E
1999 JEFFERSON PROSECUTOR'S LETTER
(C.P 131)

(County Courthouse Illustration)

385-0073

Prosecutors

Juelie Dalzell
Jefferson County Prosecuting Attorney
Courthouse – P.O. Box 1220
Port Townsend, Washington 98368
Telephone (360) 385-9180 FAX (360)
Jill Landes, Deputy Prosecutors
Michael Haas, Deputy Prosecutors
Theodore M. Cropley, Deputy
David W. Alvarex, Deputy Prosecutor

September 28, 1999

Mr. Ron Erickson
Freelance Poet
441 Elk Drive
Brinnon, WA 98320

Re: **Letter dated September 6, 1999 to Jack Westerman**

Dear Mr. Erickson;

Mr. Westerman of the Assessor's Office asked me to respond to your letter of September 6, 1999.

Mr. Westerman based on the advice of his attorney Paul McIlrath removed lands from a tax foreclosure sale. He had a right to do this based on his legal counsel's advice and did not need a court order.

Additionally, the County believes that because the Railway Company acquired its easements from the State of Washington in March of 1910 the land reverted back to the State when the easements were abandoned. Case law is fairly clear that railroad easement rights are extinguished and merged with the underlying fee ownership upon abandonment of the railroad. Roeder Co. v. Burlington Northern Inc., 105 Wn.2d 567,571, 716 P.2d 855, 859 (1986).

Since the State is the underlying fee owner of the land in question the county returned the money you paid in taxes on this land. It is our position that you hold no valid property interest in any portion of the old railroad right of ways and that is why you owed no taxes and the tax monies you did pay were refunded with interest.

Very truly yours,
/s/ Juelie
Juelie Dalzell
Prosecuting Attorney

APPENDIX F
2000 CMC RAILROAD ASSIGNMENT

439745
Page: 2 0f 2
12/20/2000 11:15
ASN 9.00

Jefferson County Excise Tax
Aff. No 091269
Date Paid 12/20/00
By c/c Treasure signature

After Recording Mail To:
Ron Erickson
441 Elk Dr.
Brinnon, Washington 98320

ASSIGNMENT

FOR VALUABLE CONSIDERATION, the receipt of which is hereby acknowledged, **CMC HEARTTLAND PARTNERS,** a Delaware partnership with an office at 330 North Jefferson Court, Suite 305, Chicago, Illinois 60661 (Successor to Richard B. Ogilvie, not as an individual but solely as Trustee of the property of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, being in possession of all the assets and property of said Railroad Company under authority of the United States District Court for the Northern District of Illinois, Eastern Division, Docket no 77 B 8999 in proceedings under Section 77 of the Bankruptcy Act) ("Grantor"), hereby assign, convey and quit claim unto **RONALD W. ERICKSON,** a single man, as his

separate estate doing business in the State of Washington as "RXR Depot and Railroad Company," all right, title and interest, either actual or potential, for any claims arising out of or resulting or to result from the cutting and logging of timber on the real property of Assignor legally described as follows, together with the right to collect any sums of money, debts, accounts, interests, and demands whatsoever, as are now or shall hereafter become due, owing, or payable or belonging to Assignor, and have, use and take all lawful ways and means for the recovery thereof, together with the right in any and every way and manner to deal with said claims, choices of action, and rights of the Assignor hereby assigned.

ALL OF THE FORMER CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC RAILROAD COMPANY'S 100 FOOT WIDE AND EXTRA WIDTH CORRIDOR LAYING in the SE1/2 SE1/4, SE1/4 NE1/4 AND NE`/4 NE1/4 OF SECTION 28, GOVERNMENT LOTS 4 AND 5 AND THE SW1/4 NW1/4 OF SECTION 27 AND IN THE SE1/4 SE1/4, SW1/4 SE1/4, SE1/4 SW1/4 NW1/4 NW1/4 OF SECTION 21 OF TOWNSHIP 27 NORTH, RANGE 12 WEST AND IN GOVERNMENT LOTS 1 OF SECTION 3 AND IN GOVERNMENT LOTS 4,5 AND 6, AND THE NE1/4 SW1/4 AND SW1/4 NW1/4 OF SECTION 2 OF TOWNSHIP 27 NORTH, RANGE 13 WEST, ALL BEING IN JEFFERSON COUNTY, WASHINGTON AND CONTAINING 49.11 ACRES, MORE OR LESS.

TOGETHER WITH any and all other claims, rights, or interests, heretofore arising out of the ownership of said real

property.

DATED this 10th day of November, 2000.

CMC HEARLAND PARTNERS,
a Delaware partnership
by; /s/ Edwin Jacobson

ATTEST:
/s/ Richard P. Brandstatter

439745
Page: 2 0f 2
12/20/2000 11:15
ASN 9.00

State of Illinois)
)SS
County of Cook)

On this date above noted, before me, the undersigned, a Notary Public in and for the county and state aforesaid, do hereby certify that **Edwin Jacobson,** personally known to me to be the **President** of CMC HEARTLAND PARTNERS, a Delaware general partnership, and **Richard P. Brandstatter,** personally known to me to be the **Secretary** of said general partnership, personally known to me to be the same person whose names are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such **President** and **Secretary** of said general partnership, they executed the foregoing instrument pursuant to authority given by the Board of Directors of said general partnership as their free and voluntary act, and as the

free and voluntary act and deed of said general partnership for the uses and purposes therein set forth.

Given under my hand and seal this 10th day of November, 2000.

/s/ Patricia Johnson
Notary Public
My commission expires:2-19-2004

OFFICIAL SEAL
PATRICIA JOHNSON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES: 02/19/04

APPENDIX G
2001 STATE ATTORNEY GENERAL LETTER

Christine O. Gregoire
ATTORNEY GENERAL OF WASHINGTON
1125 Washington Street SE, PO Box 40100, Olympia WA 98504-0100

March 9, 2001

Ron Erickson
441 Elk Dr.
Brinnon, WA 98320

Dear Mr. Erickson,

In your letter of February 28, 2001, you misunderstood a couple areas of the law. First the termination of the easement for abandonment did not have to comply with the terms of the Washington Administrative Procedures Act because such proprietary actions were specifically exempted from the act in 1988. See RCW 34.05.010 (3). Second, RCW 64.04.180 is not applicable to this case. That statute . . . . In this case DNR is and always has been the fee owner. Once the road was abandoned the rights belong to DNR as the underlying fee owner. . . Lastly, I am glad to hear that you may once again seek the advice of counsel, I look forward to discussing these matters with your new counsel.

Very truly yours,
/s/ James Schwartz
James Schwartz
Assistant Attorney General

cc: Rod Larson
Bruce Monell

APPENDIX H
1912 JEFFERSON COUNTY TAX ROLL

Real Property Assessment for Tax Roll Jefferson County State of Washington*

Year*...Name...	Lot...	Sec...	TWP...	Range...	Amount...	DatePaid
1912 Chicago	1	16	27	12W	$8.81	3-12-13
1912 Chicago	1	21	27	12W	13.08	3-12-13
1912 Chicago	1	28	27	12W	5.23	3-12-13
1912 Chicago	1	2	27	13W	1.65	1-12-13
1912 Chicago	1	3	27	13w	0.14	3-12-13

* (...) indicate data and columns deleted from record

APPENDIX I
1994 JEFFERSON COUNTY TAX ROLL

JEFFERSON COUNTY REAL PROPERTY
TAX ROLL

Tax Year 1994 Page 1883 / J-53
(misc. numbers deleted for printing) 712 211 000
Description S21 T27 R12W 19.76A
Tax 1

Taxpayer Olympic Eagle Inc
Warren L Stetson Trustee
PO Box 1212
Port Angeles WA 98362

Tax Status	Taxable
Tax Code	0601
Tax Districts	1-402H1L1
Gross Tax	33.62
SRCIT Exemption	0 .00
Net Real Tax	33.62
F/P Assessment	15.40
Total Due	49.02
1st Half Due	24.51
2nd Half Due	24.51

Delinqent [sic]

89	**none**
90	**none**
91	**none**
92	**none**
93	**none**

Classified R R R/W

JEFFERSON COUNTY REAL PROPERTY TAX ROLL

Tax Year 1994 Page 1886 / J-54
(misc. numbers deleted for printing) 712 272 000
Description S27 T27 R12W 10.49A
Tax 1

Taxpayer Olympic Eagle Inc
Warren L Stetson Trustee
PO Box 1212
Port Angeles WA 98362

Tax Status	Taxable
Tax Code	0601
Tax Districts	1-402H1L1
Gross Tax	17.86
SRCIT Exemption	0.00
Net Real Tax	17.86
F/P Assessment	15.40
Total Due	33.26
1st Half Due	16.63
2nd Half Due	16.63

Delinqent [sic]	89	**none**
	90	**none**
	91	**none**
	92	**none**
	93	**none**

Classified R R R/W

JEFFERSON COUNTY REAL PROPERTY
TAX ROLL

Tax Year 1994 Page 1887 / J-55
(misc. numbers deleted for printing) 712 283 000
Description S28 T27 R12W 7.96A
Tax 1

Taxpayer Olympic Eagle Inc
Warren L Stetson Trustee
PO Box 1212
Port Angeles WA 98362

Tax Status	Taxable
Tax Code	0601
Tax Districts	1-402H1L1
Gross Tax	13.56
SRCIT Exemption	0.00
Net Real Tax	13.56
F/P Assessment	15.40
Total Due	28.96
1st Half Due	28.96
2nd Half Due	0.00

Delinqent [sic]	89	**none**
	90	**none**
	91	**none**
	92	**none**
	93	**none**

Classified R R R/W

JEFFERSON COUNTY REAL PROPERTY TAX ROLL

Tax Year 1994 — Page unk. / J-56
(misc. numbers deleted for printing) 713 023 001
Description S2 T27 R13 — 9.96A
Tax 1

Taxpayer — Olympic Eagle Inc
Warren L Stetson Trustee
PO Box 1212
Port Angeles WA 98362

Tax Status	Taxable
Tax Code	0601
Tax Districts	1-402H1L1
Gross Tax	52.96
SRCIT Exemption	0..00
Net Real Tax	52.96
F/P Assessment	15.40
Total Due	68.36
1st Half Due	34.18
2nd Half Due	34.18

Delinqent [sic]

89	**none**
90	**none**
91	**none**
92	**none**
93	**none**

Classified — R R R/W

JEFFERSON COUNTY REAL PROPERTY
TAX ROLL

Tax Year 1994 Page 1904 / J-55
(misc. numbers deleted for printing) 713 031 000
Description S21 T27 R12W 0.55A
Tax 1

Taxpayer Olympic Eagle Inc
Warren L Stetson Trustee
PO Box 1212
Port Angeles WA 98362

Tax Status	Taxable
Tax Code	0601
Tax Districts	1-402H1L1

Gross Tax	3.52
SRCIT Exemption	0.00
Net Real Tax	3.52
F/P Assessment	15.40
Total Due	18.92

1st Half Due	18.92
2nd Half Due	0.00

Delinqent [sic]	89	**none**
	90	**none**
	91	**none**
	92	**none**
	93	**none**

Classified R R R/W

APPENDIX J
2005 PETITION FOR REVIEW to SUPREME COURT of WASHINGTON

Title Page, Table of Contents, Table of Authorities, Constitution Provisions, Statutes, Appendix
(Deleted for printing)

I. IDENTITY OF PETITIONER

Petitioner is Ronald W. Erickson. Erickson acted in his own behalf, *pro se*, as the Appellant below and the Plaintiff at trial. Erickson, as a sole proprietorship registered with the state of Washington as doing business as a railroad company under the name of "RxR Depot and Railroad Company" acquired this property. Erickson brought this action to protect his rail interests in accord with the laws of the state of Washington and RCW 81.36.040. Mr. Erickson's had some prior background specializing in cultural and linguistic interpretation of ancient biblical texts.

II. CITATION TO COURT OF APPEALS

Petitioner seeks review of Ronald W. Erickson, et al v. Department of Natural Resources, et al, ____ Wn. App. ___, ___P.3d ___ (2005), Washington State Court of Appeals, Division II, 2004 Term (No. 31569-6-II). The unpublished opinion was filed on May 10, 2005 affirming the trial courts summary judgment finding abandonment of Erickson's railroad easements over state lands. The Opinion is attached as Appendix A-1. The Court of Appeals' "Order

Denying Motion To Reconsider" was filed on June 22, 2005 and is attached as Appendix A-2.

A. DOES ABANDONMENT'S AUTOMATIC REVERSION TO FEE OWNER VIOLATE THE CONSTITUTION'S SEPAR-ATION OF POWERS WHEN APPLIED TO ERICKSON'S RAILROAD RIGHTS OF WAY THROUGH STATE LANDS?

B. DOES THE FEDERAL BANKRUPTCY COURT'S SALE OF RAILROAD PROPERTY TO OLYMPIC EAGLE FOR NON-RAILROAD PURPOSES VIOLATE THE STATE CONSTITUTION'S GUARANTEE THAT ANY PERSON OR CORPORATION MAY OWN CORPORATE RIGHTS EQUALLY, CONST. ART. 1 SEC. 12?

C. DOES THE GRANTING OF THIS ABANDONMENT VIOLATE THE CONSTITUTIONAL GUARANTEE THAT NO CORPORATION MAY SELL PROPERTY TO RELIEVE A FRANCHISE, CONST. ART. 12 SEC. 8?

Subsidiary to this question are the questions:

1. Is a legislated railroad right of way a franchise?

2. If such is not a franchise does abandonment violate due process protected by federal law and

Const. art. 1 sec. 3 & 16?

D. DID THE STATE CONSTITUTION AND STATUTE – CREATING ERICKSON'S RAILROAD RIGHTS OF WAY INTEND THE CORRIDOR TO BE A MULTI-USE ROAD INTENDING A COUNTY ROAD VACATE ORDER AFTER ABANDONMENT?

IV. STATEMENT OF THE CASE

This is a railroad abandonment case of a never developed railroad right of way through state lands granted by legislative action. The State created RCW 79.36.450-500 for railroads to acquire easements through state lands in 1901, CP1 at 104; revised 1907, OB App. B-4; through a process of paying full market value for land and trees, CP at 21, 60, 69; and filing survey maps with the state, CP at 104, 105. In 1909, under these laws CM&PS acquired easements

---

[1]Abbreviations in this Petition for Review are:
The Chicago, Milwaukee & Puget Sound Railroad Co.; Chicago, Milwaukee & St. Paul Railway Co.; or Chicago, Milwaukee, St. Paul & Pacific Railroad Co.; CM&PS.
Corrected Opening Brief for Appellant, OB.
State Department of Natural Resources, DNR.
Response Brief of the State of Washington DNR, RB.
Reply Brief for the Appellant, ARB.
Court of Appeals' Unpublished Opinion re., UO or "The Opinion."
Petition for Review, PR.
CMC Real Estate Corporation, CMC.
Olympic Eagle Inc. & Warren L. Stetson Trust, OE.
Laws of 1901 c 173 p 353, rev. 1907 c 104 p 201; Laws of 1901."
Laws of 1901, sec. 7, p 355; "Exclusive Clause."
Federal Interstate Commerce Commission, ICC.
Federal Surface Transportation Board, ICC.

through six sections of state lands in Jefferson County, CP at 59-88. These easements are in western Jefferson County south of Forks, Washington, CP at 40. They were never developed or constructed with rails, CP at 116.

CMPS went through a series of bankruptcies: 1912, not substantiated at trial; 1927, CP at 22; 1945, CP at 23; 1977, CP at 23. The final order of the 1977 bankruptcy was filed November 12, 1985, CP at 23, 51-57. The federal bankruptcy court authorized the sale of ALL assets through a liquidator, CMC Real Estate Corporation, CP at 58. That appointed agent of the bankruptcy court [not "Chicago," UO at 5] sold the property to Olympic Eagle Inc. and Warren L. Stetson Trust, CP at 113. In 1998 Ronald W. Erickson, d/b/a RxR Depot and Railroad Co., acquired ALL the interests of Olympic Eagle and the Warren L. Stet-son Trust in said railroad easements by quit claim deed, CP at 90.

Erickson filed the original complaint for "Quiet Title, Timber Trespass, Declaratory Judgments and Injunctive Relief" against the state DNR in Jefferson County Superior Court on June, 6, 2003, CP at 3. Erickson amended his complaint in a "First Amended Complaint for Quiet Title, Declaratory Relief, Injunctive Relief and Damages," CP at 19 seeking clear ownership, trespass damages, restoration damages as well as declaratory relief and other damages "including but not limited to," those specified, CP at 26. The DNR petitioned a "Motion for Summary Judgment" on January 16, 2004, CP at 29. The trial court signed an order in favor of the state finding abandonment and no material

facts in dispute on February 20, 2004, CP at 136-137. Erickson appealed the case in a number of attempted opening briefs culminating with a "Corrected Opening Brief" filed October 23, 2004. The Court of Appeals affirmed on May 25, 2005 the finding of abandonment of the trial court though avoided interpreting the provisions of The Laws of 1901 railroad statutes as well as some issues not properly brought before the court, UO at 4. The issue of automatic reversion raised by the DNR was addressed in oral argument. The court affirmed abandonment based on the following facts, in conjunction with non-use, UO at 4, 5. Some contested facts (*) were argued as unsupported inferences though the argument failed, UO at 4.

"Chicago never established a rail corridor"

"Chicago never developed a line,"

"Chicago failed to acquire rights over intervening private lands."*

"Highway 101 was constructed parallel to the easements in 1920."

"Chicago sold them to Olympic Eagle a timber company."

"Chicago failed to pay taxes on adjoining rail right of way*.

Chicago allowed adjoining rail right of way to go to foreclosure*.

Chicago sold contested property to avoid foreclosure sale*.

"Olympic Eagle's vice president, declared that the

company had no intent to use the
easements for railroad purposes."

The court believed the rail property was abandoned BEFORE Olympic Eagle sold their holdings to Erickson, UO at 5. Erickson's Request for Reconsideration was denied June 22, 2005.

V. ARGUMENT

A. INTRODUCTION

This is a railroad abandonment case. Erickson did not timely submit facts to contest what the DNR presented for the trial court and consequently a summary judgment was requested by DNR. The trial court judge most likely saw the word "easement" and believed Erickson's legislated railroad right of way easement was equivalent to any other easement. This was evident from the non-railroad case law her lordship referenced at trial as additional authority. The Court of Appeals considered Erickson's additional questions in his brief but found the railroad easement not a highway, UO at 7, not a franchise, UO at 6, and "only easements in land nothing more," UO at 7. The court of appeals cited the bankruptcy court's sale of property for non-railroad purposes as a cause for abandonment also, UO at 6. The court of appeals accepted DNR's "conglomerate identity" "Chicago" for the multiple railroad ownerships of Erickson's easements. There were in fact five separate railroad identities: after 1909, the Chicago, Milwaukee & Puget Sound Railroad Co., CP at 2; 1912-1927, Chicago, Milwaukee, & St. Paul

Railway Co., CP at 22; Post-1927, Chicago, Milwaukee, St. Paul & Pacific Railroad Co., CP at 22; Post-1945, Chicago, Milwaukee, St. Paul & Pacific Railroad Co. (reorganized), CP at 23; Post-1977, CMC Real Estate Corp., CP at 23, 54. The court held CMC responsible for prior actions of railroad companies as contributing to abandonment in spite of the fact that federal bankruptcy court authorized the transfer of the easements as assets, CP at 23.

The challenge left un-addressed by the Court of Appeals was the constructive interpretation of the complete context of the granting instrument, the original version of the Laws of 1901 under which the property was vested, OB at 23-41. That statutory context uses the undefined word "road" to describe railroad rights of way through state lands, OB at 5, as well as an "exclusive clause" making "ANY future grant . . . by the state of the lands . . . shall be subject to the easement. . . . ," OB at 5. The statute's word "easement" and a previous Washington court finding in Roeder Co. v. Burlington N., Inc., 105 Wn.2d 567, 716 P.2d 855 (1986) at 571, supposedly establishes for ALL railroads easements that "when a railroad abandons an easement, the right of possession reverts to the landowner," UO at 5; AND a previous decision in Hanson Indus., Inc. v Spokane County, 114 Wn. App. 523, 58 P.3d 910 (2002) at 535 review denied, 149 Wn.2d 1028 (2003), that established that there is no transfer of assets or property if a previous abandonment.

That is what was. It appears to be a simple abandonment. The complication is that Erickson's easements

were NOT acquired by a "threat of condemnation" but created by state statute using the word "road" and an "exclusive clause;" AND declared an asset and sold by a federal court.

B. THE "AUTOMATIC REVERSION' OF LEGISLATED RAILROAD RIGHTS OF WAY GRANTED THROUGH STATE LANDS VIOLATES THE CONSTITUION'S GUARANTEE OF SEPERATION OF POWERS.

RCW 4.04.010 demands that any application of common law be "not inconsistent with the . . . laws of . . . the state . . . ." The legislature granted railroads the power to condemn property in 1869, RCW 81.36.010 & RCW 81.53.180. The legislature granted cities authority to create railroad easements through cities called franchises, RCW 81.64.010. The legislature granted authority to DNR to create railroad easements through state lands, "The Laws of 1901." Historically abandonment theory was developed on railroad property acquired under possible "threat of condemnation." Abandonment law and eminent domain do not work against the state or against cities that grant railroads, RB at 20, 21 unless with legislated authority to acquiring the use, RCW 81.36.010, 040.

It may be an oversight but there is no RCW for the Laws of 1889 c 17 sec. 4 p 528 granting authority to the courts to abandon railroads, OB at 40. If the law was repealed then the legislature would only now allow courts to

abandon easements at common law or as roads, Laws of 1901 c 90 sec. 6 p 191, OB at 39. Common law was not intended to undo legislated intent, OB at 40. The court may have no authority in this case.

State agencies have only delegated legislative powers. The idea that an agency has inherent authority to interpretive regulations conflicts with the separation of powers and long-standing doctrine concerning the delegation of powers. Uhden, Inc. v. Greenough, 181 Wash. 412, 43 P.2d 983 (1935) at 425-27, and Barry & Barry v. Dep't of Motor Vehicles, 81 Wn.2d 155, 500 P.2d 540 (1972) at 159 [agencies only have the powers that are delegated to them by the legislature]. The DNR does not have inherent authority to ignore an interpretation of the 1901 law's "exclusive clause" in order to apply abandonment to legislated easements. The DNR cannot justify its actions on the basis of enabling legislation, RB at 16, UO at 7. Enabling legislation is not adequate for other state departments to justify department actions, RCW 82.01.060(2).

The federal government did not give to any state court the right to dissolve corporate assets. By federal preemption the ICC and reorganization court have EXCLUSIVE authority to dispose of rail service and PROPERTY they determine as railroad assets, CP at 54, Matter of Boston and Maine Corp. C.A.1 (Mass) 1070, 506 R.2d 2 (1979) at 5. Here the state of New Hampshire attempted to keep a railroad service and property the ICC and reorganization court authorized abandonment. The court

found they should have settled title ownership questions in reorganization proceedings, Matter at 7. The state lacked authority and was too late to reverse the federal action.

The Court of Appeals cites Roeder at 571 to establish that "when a railroad abandons an easement, the right of possession reverts to the landowner," UO at 5. DNR cited Hanson, RB at 7, that refers to automatic reversion as supported by Lawson v. State, 107 Wn.2d 444, 730 P.2d 1308 (1986) at 452 adopting Schnabel v. DuPage Cy., 101 Ill. App.3d 553, 716 P.2d 855 (1985) at 559. Lawson at 449 refers back to Morsbach v Thurston County, 152 Wash. 562, 278 P. 686 (1929) at 568-9. (There is evidence here that the cases that support automatic reversion only apply to private grants. Does the word private infer legislative?) Morsbach does discuss the reversion question and reviewed Abercrombie v. Simmons, 71 Kan. 538, 81 P. 208 (1905) among other cases. Morsbach only held that:

> We will construe the deed, as the parties evidently INTENDED, [emphasis added] as a grant of right of way ONLY, TITLE [emphasis added] to which ceased when the railway company abandoned it as a right of way."

Morsbach did not hold to automatic reversion, the underpinning cases did. Abercrombie and others established that automatic reversion applied to railroad fee ownerships and easements EQUALLY as both were acquired UNDER THREAT of condemnation and ONLY easements.

DNR's grant of easements to CM&PS is more

analogous to street railroads as franchises than railroad easements acquired by condemnation, OB at 10, RB at 20. The Court of Appeals did not think it so, UO at 7. However legislated Congressional land-grant railroads are not subject to common law abandonment, Barney v. Burlington Northern RR. CO., 490 NW.2d 726, (S.D. 1992) at 730, Writ of Certiorari Denied, OB at 24. Abandonment/reversion is not applicable to ALL railroad easements!

Erickson's railroad rights of way were created outside that arena of abandonment law as legislated easement that could never be acquired by threats of condemnation. The Court of Appeals finding of abandonment and automatic reversion is not in harmony with the intent of Morsbach and the underpinning holdings of cases supporting Morsbach.

There is also a separation of powers concept as it applies to un-constructed railroad rights of way, OB at 24. Spokane & British Columbia Ry. Co. v. Wash. & Great Northern Ry. Co. 219 U.S. 166, 55 L.Ed.159, 31 S. Ct. 182 (1911) at 162 established that un-constructed railroads with a reversion clause may only be "taken advantage of by the grantor." This case reviewed a Washington Supreme Court decision. This court found that,

> Until the United States has asserted its right to enforce forfeiture for the breach of these conditions, either by legislative declaring a forfeiture, or by judicial proceedings authorized by law, the title remains unimpaired in the grantee.

Our problem at issue is similar. In Spokane one

railroad company attempted to use the un-constructed railroad easement of another assuming abandonment, Spokane at 161. This case would then argue that only the state legislature or judicial proceeding and not a DNR ruling is required to bring abandonment on state lands. Historically *Writs of Mandamus* are required, ARB at 5, 15 or legislative purchase, OB at 15.

DNR still does not have explicit legislated authority to act on pre-1927 state railroad easements or grants, OB at 17, 43. A statutory interpretation of the "exclusive clause" would have kept the easement in existence against any application of abandonment by the state, including the courts. Courts are a branch of the state. Spokane argues that DNR as the fee owner does not have official standing before the court to bring abandonment on a legislated railroad right of way.

C. THE SALE OF RAILROAD PROPERTY BY A FEDERAL BANKRUPTCY COURT TO A TIMBER CORPORATION ESTABLISHING ABANDONMENT FOR NON-RAILROAD PURPOSES IS A VIOLATION OF THE STATE CONSTITU-TION ART. 1, SEC. 12.

Federal Law preempts the state court's finding, Matter at 5.

Const. art 1 sec. 12 grants individual citizens the same privileges as any other corporation except municipal corporations. In 1888 the state legislature accepted the

"Shifting Public Use" Doctrine into state law, Laws of 1888 p 64, revised Laws of 1895 c 80 p 146, now RCW 81.36.010, 040. The 1881 doctrine of "Shifting Public Use" was found in Presault v.U.S. 24 Cl. Ct. 818, (1992) at 832. Here the doctrine is explained in part:

> Under the doctrine of shifting public use, when an easement is given for public use, such as a railroad, and then put to another similar use, no abandonment will be held to have occurred. . . . There is no change of use involving a new taking when, under legislative authority, the location of a plank-road or canal is con-verted into that of a highway, or of a railroad."[2]

The legislature in 1888, pg 64, RCW 79.36.010, 040, modified the common law doctrine of "Shifting Public Use" so that railroads would compensate counties for displacing public roads for rail construction. With a "Shifting Public Use" acceptable by the legislature the federally authorized sale of railroad property to OE would be lawful. Timber road use of railroad rights of way was common.

The common law for corporate acquisitions of property in 1905 was stated in Abercrombie at 210. Here the court examined the question:

> Was the interest which the railroad company acquired by the deed one which it could convey to

[2]Quote: E. L. Pierce, A Treatise on the Law of Railroads, 233, 234 (1881).

> plaintiff? The general rule is that, in the absence of charter or statutory restrictions, corporations may take, hold, and convey land for any purpose not inconsistent with those of which they were created.

Our state constitution's intent was to modify this common law restriction on corporate acquisitions to allow ANY person or corporation to own corporate rights equally, Const. Art 1 sec. 12, PR App. II, OB at 20. The court misrepresented abandonment doctrine for our state when it referred to Arkansas law and said the "sale for a private use" supports abandonment, UO at 5. Arkansas law is not appropriate for Washington, for a number of reasons, ARB at 4.

Other Washington case law requires ACTIONS of a DESTRUCTIVE nature to abandon railroad property. Prior decisions of this court have required a "destruction" of the right of way, Northern Pacific Railway Co. v. Tacoma Junk, 138 Wash. 1, 244 P.1 (1926) at 119; or "damage" to the servient estate, Netherlands American Mortg. Bank v. Eastern R. & L. Co., 142 Wash. 204, 252 P. 916 (1927) at 211. This is also true in other jurisdictions; "destroyed" the right of way use, Schnabel v. DuPage Cy., 101 Ill. App.3d 553, 716 P.2d 855 (1985) at 676; and "uniquivocal extinguishment" of the right of way, Pencader Assocs. Inc. v. Glasgow Trust, 446 A.2d 1097, (Del. 1982) at 1101. These cases evaluate ACTIONS of a railroad company not statements of corporate officers to determine intent.

Historically the courts have not trusted what a railroad CEO said. It was lawful for OE to acquire the railroad property.

D. THE GRANTING OF AN EASEMENT THROUGH STATE LANDS IS A CONTRACT WITH THE STATE AND SUBJECT TO THE STATE CONSTITUIONAL GUARANTEE THAT NO CORPORATION WILL "RELIEVE" A FRANCHISE.

Subsidiary to this statement are the additional findings that

1. Legislated railroad rights of way are franchises?

Constitution article 12, section 8 of the state Constitution provides that:

> No corporation shall lease or alienate any franchise, so as to relieve the franchise or property held there-under, from the liabilities of the lessor, or grantor, lessee, or grantee, contracted or incurred in the operation, use, or enjoyment of such franchise or any of its privileges.

There was much talk about whether the state rights of way through state lands were a franchise, RB at 20. If it was the legislature has authority only to abandon, OB at 24. The Court of Appeals stated that the legislature did not grant a franchise, UO at 6. This decision is not in harmony with other decisions of the state. Nicomen Boom Co. v. North Shore Boom & DrIving Co., 40 Wash. 315, 82 P.412 (1905)

at 325, referred to railroads filing plat maps as franchises, OB at 10. Maps filed with the DNR land office for Erickson's easements were called "survey maps" by the legislature, The Laws of 1901. Although the Nicomen comment is not a court finding it does represent the court's historical perception of the law in 1929: railroads that filed plat maps were legislated franchises. [Judicial notice of CM&PS maps filed in the DNR records office would show Erickson's are titled, ". . . Right of Way Plat."]

Vague route maps are filed for railroad extensions, RCW 81.36.060. Boom companies use to file "a plat or survey," 1910 Rem & Bal. @ 7121. RCW 79.36.440 required roads filing "petition and plat." The Laws of 1896, c 89 sec. 35 p 245 required plat maps for public roads through STATE LANDS to be filed with the Commissioner of Lands. Nicomen at 325 referred to OUR state plat maps and not other states as DNR wrote, RB at 17fn. Railroads filed plat maps with the DNR in compliance to the 1896 Road Laws until the law was changed in 1901 and called "survey maps." Railroads through state lands were treated as public roads until 1901 and when The Laws of 1901 granted them "exclusive use" and perpetuity. From early 1800's to 1940 railroads were pushing legislation to keep the public off their rights of way.

As a franchise the declaration of Olympic Eagle could not "relieve" or lesson the existence of Erickson's railroad easements, OB at 20.

2. This grant violates due process protected by federal law and Const. Art 1 sec. 3 & 16?

Grants of the legislature without a specific time limit to construct ALSO constitutes a perpetual franchise protected by the federal Contract Clause. In Northern Pac. Ry. Co. v. Hirzel 29 Idaho 438, 161 P. 854 (1916) here the court found that railroads were not permitted to take title to Trust Lands. Nebraska Telephone Co. v. City of Fremont 72 Neb. 25, 99 N.W. 811 (1904) also. Perpetual grants are treated differently and called "grants in fee," OB at 14. If the grant is not a franchise than claiming abandonment is still a violation of due process and Washington Constitution article 1 sections 3 and 16.

E. WASHINGTON LAWS AND CONSTITUTION DID INTEND PUBLIC USE OF RAILROADS AS MULTI-USE ROADS WITH THE INTENT OF APPLYING A COUNTY ROAD VACATE ORDER?

Erickson argued the canon of *in pari materia* and the legislated intention of railroads being public roads in his brief, OB at 31, 39. He showed possible harmony of such a constructive interpretation of the statutes' use of the word "road" in The Laws of 1901 with other state legislation, OB at 23-41. The Court of Appeals found that such arguments were "Inapplicable Statutes" saying that the "grant to Chicago was an easement; it was not intended to be a public highway. . . ," UO at 7. [The Court of Appeals used the word "highway" instead of "road" as used in the The Laws

of 1901. Unidentified words are understood at common usage, Franson v. Board of Nat. Res. of Wash St., 66 Wn2d 673, 404 P2d 432 (1965) at 674-5. "Road" was used in early state legislation and judicial commentaries to describe railroads, OB at 28, OB App. A, because they were roads. Some states repealed railroad laws that declared railroads roads, OB at 27. Our state has not.

"[T]he legislature does not engage in unnecessary or meaningless acts, and we presume some significant purpose or objective in every legislative enactment," Sellen Constr. v. Revenue, 87 Wn.2d 878, 558 P.2d 1342 (1976) at 883. Every word in legislative acts is to be given meaning, International Paper v. Revenue, 92 Wn.2d 277, 595 P.2d 1310 (1979) at 281 ("[E]ffect must be given, if possible, to every word in a statute.") The Court of Appeals should have recognized the distinct language of The Laws of 1901 and provided meaning to the plain language to the word "road."

Erickson argued the application of county road vacate orders to "ANY" road in 1855 to be applied to the Northern Pacific Railroad, called a "road" (OB at 20) ten times by the 1857 legislature, OB at 35 & OB App. C-1. Three times the legislature adopted railroad laws and revised the county road vacate process in the same legislature using the word "road" in both legislations, OB at 39. Such legislation clearly established the intent to apply a road vacate order process and gives understanding as to why early railroads fought for exclusive use of their right of ways until 1942, OB at 30.

The public interest has been to retain public use of

railroad rights of way. Abandonment is often argued by a county or citizen group to retain the rail corridor for trail (primitive road use) and not allow a reversion to fee owners. In 1986, by a vote of 2 to 1, Lawson at 458 found unconstitutional RCW 64.04.190 that legislated public use of abandoned railroads, Laws of 1988 c 16 p 34. The Lawson court did not examine abandonment/reversion in light of the state Constitution and early railroad law's intent to guarantee railroad rights of way as multi-use roads for the public need. Past Justice Utter held to the public interest in railroads as transportation corridors, Lawson at 464-7, OB at 40.

The legislature changed the words "such road" in The Laws of 1901, now RCW 79.36.460, to "railroad" in 1967, OB at 29. Another fundamental rule of statutory construction is that the legislature deemed to intend a different meaning when it uses different terms, State v. Roggenkamp, 153 Wn.2d 614, __P.3d__ (2005) at 625. That change possibly stops new railroads from becoming roads. Public railroads created before 1967 were vested with the possibility of having public access, ARB at 20.. The people have a right to reclaim their lost rights.

Since 1889 our Const. art. 12 sec. 13, OB at 28, RB at 19, and early railroad laws establish railroad "roads" as "post roads," OB at 26, 27; and transportation corridors for communication uses, OB at 13, 27. This fact is supported by Kershaw Sunnyside Ranches, Inc., v. Yakima Interurban Lines Ass'n, 121 Wn. App. 714, 91 P.3d 104 (2004), OB at 26. Here the court allowed a railroad right of way to be

abandoned and the right to establish communication lines retained by the railroad company as "incidental use." Const. art. 12 sec. 19, OB at 26, guarantees railroad easements something more than "only an easement in land," UO at 7. Railroads are an easement in a multi-use transportation corridor. The trespass laws of Washington allowed public use of single track railroads, OB at 29, 30. Federal law allowed roads on federal railroads until 1920, OB at 22, 30, 33. Bridge laws presumed public access onto railroads, OB at 29. Irrigation use was allowed on railroad rights of way, RCW 81.36.130, OB at 27. Historically, Washington railroads were intended to be more than simple easements being created with multiple public interests and sometimes outside of the common law of abandonment and automatic reversion. There was also no Court of Appeals comment on a "Public Trust Doctrine" on railroads established in 1856 in Erie & N. E. Railroad v. Casey, 26 Pa. 287, 3 Pitts. Leg. J. 261 (1856), OB at 34, as it applied to early state railroad legislation of 1857; or the fact that early railroads "shall be and remain a public highway," Lake Superior and Mississippi RR Co. v. United States, 93 U.S. 442, 3 Otto 442, 23 L.Ed 965 (1877) at 966, OB at 32. This was the common expectation in law as we created a state Constitution and early railroad legislation calling railroads "roads." There was great oversight in the Court of Appeals not placing abandonment and reversion rights in the proper legislated context of railroad law. Instruments granting railroad rights of way are to be interpreted within the proper

historic context giving meaning to every word and honoring original intent. It is time the people of Washington regained their lost reversion rights on their rail roads.

VI. CONCLUSION

For the forgoing reasons Petitioner Erickson asks the Justices of this Supreme Court of Washington to accept this Petition for Review and reverse the Court of Appeals finding of abandonment and declare all public railroads public roads requiring a road vacate order for reversion.

Dated this _____ day of July, 2005.

Respectfully Submitted
/s/ Ron Erickson
Ron Erickson, *pro se*
934 W. Lauridsen Blvd. # 209
Port Angeles, WA 98363
Phone: (360) 457-5527

APPENDIX (deleted for printing)